



The National Association of State Directors of Veterans Affairs, Inc.

April 28, 2017

Honorable Phil Roe, M.D.
Chairman
House Committee on Veterans Affairs
335 Cannon House Office Building
Washington, D.C. 20515

Honorable Tim Walz
Ranking Member
House Committee on Veterans Affairs
335 Cannon House Office Building
Washington, D.C. 20515

RE: Veterans Appeals Improvement and Modernization Act of 2017 (Draft)

Dear Chairman Roe and Ranking Member Walz:

On behalf of the National Association of State Directors of Veterans Affairs (NASDVA), thank you for your work and support on behalf of our Nation's Veterans and for your commitment to modernizing the Veterans Affairs Appeals process. NASDVA is honored to have been a part of the working group, including VA and a very wide group of our Nation's Veterans Service Organizations, whose work resulted in language and legislation that passed in the United States House of Representatives last year. The work and cooperation last year that yielded workable and sustainable Appeals Reform is unprecedented and should be the model for getting things done in the future. The process included stakeholders who are actually "on the ground" serving Veterans every day. We are hopeful that any final Appeals Modernization legislation will accurately reflect the work and majority agreement reached last year.

In reviewing the discussion draft (Veterans Appeals Improvement and Modernization Act of 2017) provided to NASDVA on Monday, April 24, 2017, we submit the following comments:

1. There are significant content changes within the discussion draft that NASDVA had no knowledge of or discussion on until receiving the draft on April 24, 2017. We are disappointed in that as it has been the framework and cooperation of many stakeholders that enabled this vitally important initiative (for our Veterans) to advance to where it is now.
2. NASDVA has been and continues to be concerned and cautions against any language that may be intended to expand (paid) attorney's fees under the "guise" of preserving Veterans' rights. (Reference: NASDVA letter to Senate Veterans Affairs Committee dated September 23, 2016). We are concerned about language, as to effective date after the courts, in the discussion draft. The following items of discussion are germane to that point:
 - a. An intentional feature of the design developed collaboratively with Appeals Working Group was that Veterans would not be encouraged to initiate judicial review when there is an efficient administrative remedy available.
 - b. Allowing effective date protection after the Courts could provide incentive for filing an appeal to the Court for the sole purpose of generating attorney fees, notwithstanding the fact that a more immediate remedy is available in the administrative process.
 - (1) As we understand, attorney fees would be available for representing claimants in the higher-level review, supplemental claim, and appeal lanes.

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- (2) A reason behind effective date protection after the Courts (for paid attorneys) could be that it would delay resolution and generate more past due benefits; advantageous for attorneys but not good for Veterans.
- (3) As NASDVA has maintained previously, judicial review should be reserved for Veterans who believe that they have exhausted their administrative remedies and have a meritorious legal issue.
- (4) There is currently no effective date protection if the Court of Appeals for Veterans Claims (CAVC) affirms a Board of Veterans Appeals decision. The improved process, reflected in the collaborative/cooperative VA/stakeholder proposal, is not a change from the current system. Just as currently exists, in the new process, if CAVC vacates and remands the Board decision, the effective date is protected. Veterans lose no rights, as they exist in current law, in the Appeals Working Group proposal.

There has been much work that has gone into developing meaningful Appeals Modernization/Reform over the past year and a half. The work has focused, putting the Veteran first, on a system that seeks the best possible and timely outcome at the lowest level that is both advantageous to the Veteran and the American taxpayer. We find it disheartening that there continues to be an effort to insert language that (appears) to be intended to support the business model of (paid) attorneys. We sincerely hope attention will be refocused on making sure the largest number of Veterans are served in the most efficient manner possible.

NASDVA sincerely appreciates this opportunity to submit our views on the current Veterans Appeals Improvement and Modernization draft.

Sincerely,

SIGNED

Randy Reeves
President
NASDVA